

## **EXHIBIT 5**

1 IN THE UNITED STATES DISTRICT COURT  
2 IN AND FOR DISTRICT OF DELAWARE

3 WILLIE DAVIS, JR., )  
4 NATHANIEL BRIDDELL, )  
5 GEORGE W. FEDDIMAN, )  
6 JOSEPH GARRISON, )  
7 LARRY E. GIBBS, )  
8 ROY H. WALTERS, )  
9 )  
10 ALL SIMILARLY SITUATED CURRENT )  
11 AND FORMER EMPLOYEES OF )  
12 MOUNTAIRE FARMS, INC., )  
13 MOUNTAIRE FARMS OF DELMARVA, )  
14 INC., and MOUNTAIRE FARMS OF )  
DELAWARE, INC., )  
Plaintiffs, )  
10 -vs- ) C.A. No. 04-0414  
11 MOUNTAIRE FARMS, INC., )  
12 MOUNTAIRE FARMS OF )  
13 DELMARVA, INC., and )  
14 MOUNTAIRE FARMS OF )  
DELAWARE, INC., all Delaware )  
corporations, )  
Defendants. )

15 -----  
16 Deposition of PHILLIP OWEN, taken before  
17 Pamela C. Washington, Registered Professional Reporter  
and Notary Public, at the law offices of Young,  
18 Conaway, Stargatt & Taylor, 110 West Pine Street,  
Georgetown, DE, on February 1, 2005, beginning at 1:00  
p.m.

19 APPEARANCES:

20 On behalf of the Plaintiffs:  
21 Margolis Edelstein  
22 BY: JEFFREY K. MARTIN, ESQ.  
and KERI L. WILLIAMS, ESQ.  
1509 Gilpin Avenue  
Wilmington, Delaware 19806

23 On behalf of the Defendants:

24 Shawe & Rosenthal  
25 BY: ARTHUR M. BREWER, ESQ.  
20 South Charles Street  
Baltimore, Maryland 21201

Owen - Martin

1                   A    I don't know. I should know but I  
2    don't know.

3                   Q    All right. Let me just finish up here.  
4    We noted that there was a change in status from  
5    nonexempt to exempt according to Mountaire in June of  
6    2002.

7                   A    Correct.

8                   Q    And I recognize that you were not yet  
9    employed at Mountaire, but you have the access to the  
10   HR files and the other files, correct?

11                  A    Yes, yes, yes, I do. Yes, I do.

12                  Q    Were you aware of any type of analysis  
13    that was undertaken by the company to support the  
14   change from one to the other?

15                  A    I am not. I don't -- I know of no such  
16   analysis.

17                  Q    All right. Now, let me ask you kind of  
18   a catch-all question, and that is you have testified  
19   that there were various memos written between you and  
20   Mr. Brown, and you and Al Z --

21                  A    Yes.

22                  Q    -- all of which you are going to  
23   produce, subject to any exceptions by your counsel.  
24   Are there any other memos or any other writings with  
25   regard to this issue as to the crew leader entitlement